

AG Contract No. KR02-1813TRN
ADOT ECS File No. JPA 02-139
Project: Santan Freeway (202L)
Section: Dobson Road- Arizona Avenue
TRACS No.: H5666 01C

AGREEMENT

BETWEEN
THE STATE OF ARIZONA,
AND
CONTINENTAL CHANDLER LLC.

THIS AGREEMENT is entered into 7th November, 2002, pursuant to the Arizona Revised Statutes, Section 28-401, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and CONTINENTAL CHANDLER LLC. (the "Developer").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-408 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The Developer has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Developer.
3. Incident to the State's construction of the Santan Freeway (202L), and as part of the City of Chandler's development requirements, the Developer is required to construct a deceleration/left turn lane at Arizona Avenue for entrance to Kohl's Retail Center. It is in the best interest of the State and the Developer for the State to reconstruct Arizona Avenue south of the Santan Freeway (the "Freeway") and include this reconstruction improvement in it's construction, as shown in Exhibit C, attached hereto and made a part of the Freeway, hereafter referred to as "Project", at an estimated total cost of \$57,121.57, as shown in Exhibit A and B, attached hereto and made a part of.
4. Nothing herein shall be construed to impose an obligation on the part of the State to in any way fund the Developer's improvements to Arizona Avenue associated with the Kohl's Retail Center and required by the City of Chandler, other then that which is contained in this agreement incident to the above referenced Project.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. 25610
Filed with the Secretary of State
Date Filed: 11/07/02
Betsy Bayless
Secretary of State
By: William D. Haenewald

II. SCOPE OF WORK

1. The State will:

a. Upon execution of this agreement, invoice the Developer in the amount of \$57,121.57 for the estimated costs of the Project, as shown on Exhibit A (design) and Exhibit B (construction), which shall be available to the State to pay actual design and construction costs associated with the Project. Payment of the estimated amount will be due in (30) days after receipt of an invoice from the State.

b. Upon receipt of the estimated funds, agree to be the authorized agent for the Developer. On behalf of the Developer, the State will contract with its design consultant to prepare design plans, specifications and other such documents required to construct the Project.

c. Provide design plans to the Developer at the 100% design stage for review comments. Be responsible for any design consultant claims for extra compensation attributable to the State, for Developer's portion of the work on Arizona Avenue.

d. Grant the Developer, the necessary permits required for construction of the underground utilities in Arizona Avenue, as required of the Developer by the City of Chandler for development of Kohl's Retail Center.

e. Confer with the Developer on any Project related design modifications. Upon receipt and written concurrence from the Developer of the City of Chandler's acceptance of the plans, the State will call for bids, administer construction and make all payments to the contractor for the Project.

f. Make it's best effort to maintain accessibility to the Kohl's Retail Center, but is in no way obligated to maintain access throughout Project construction and the State's construction contiguous to the Project herein. Be responsible for any construction contractor claims for extra compensation attributable to the State, for Developers portion of the work on Arizona Avenue.

g. Upon completion of the Project, the Project Manager, in cooperation with the Cost Accounting office, provide the Developer with a recapitulation of the Project costs, along with an invoice or reimbursement, for the difference between the estimated amount paid by the Developer and the actual costs for the Project.

h. The State and the Developer agree to share the cost equally on the following items associated with the Project, concrete curb, concrete sidewalk, gutter, embankment spillway and embankment scupper as noted in Exhibit C.

2. The Developer will:

a. Upon execution of this agreement and within 30 days after receipt of an invoice, remit to the State \$57,121.57 as shown on Exhibit A and Exhibit B, for the estimated costs of the Project. Such monies shall be available to the State to pay actual design and construction costs associated with the Project.

b. Hereby designates the State as authorized agent for the Developer. Review the design plans, specifications and other such documents at the 100% design stage and provide comment.

c. Obtain all required permits necessary for the construction within limits of the State's construction project of the Freeway.

d. Install all underground utilities within the limits of the Freeway construction, required by the City of Chandler, in advance of the State's construction. Upon completion of Developer's construction, provide the State with documentation of the City of Chandler's acceptance of the utility installation. The Developer will provide the State As-Built, within 90 days of the completion of installation of said utilities.

e. Be responsible for the actual costs for design and construction costs of the Project. Be responsible for any liability that may be a result of the Project including but not limited to any design consultant or construction claims for extra compensation attributable to the Developer, with the exception of any negligence or willful conduct on the part of the State.

f. Be responsible for all costs incurred by the State, should the Developer withdraw its proposed Project for whatever reason. All costs incurred by the State up to the date of cancellation, shall be deducted from the Developer's funds deposited with the State, unless the reason for the Developer's cancellation is due to the State's failure to comply with its obligations thereunder.

g. Upon completion of the Project, reimburse the State within 30 days after receipt of an invoice, if the actual costs incurred by the State to accomplish the Project exceeds the amount of the Developer's remittance, stated in II. 1.a. & 2.a. above.

h. Coordinate with the State's Construction Resident Engineer and Contractor for ongoing Santan Freeway (202L) construction. The Developer understands and agrees that during construction of the Project improvements, access to Kohl's Retail Center may be inaccessible for short period of times during the construction of the Project and the State's Freeway construction project.

i. The State and the Developer agree to share the cost equally on the following items associated with the Project, concrete curb, concrete sidewalk, gutter, embankment spillway and embankment scupper as noted on Exhibit C.

III. MISCELLANEOUS PROVISIONS

1. It is understood and agreed by both parties, the State is not obligated to maintain access to Kohl's Retail Center during construction of the Project, nor during construction of the State's Freeway construction contiguous to the Project. The State will make it's best effort to maintain accessibility to the Kohl's Retail Center during construction, of Arizona Avenue.

2. This agreement shall remain in force and effect until completion of the Project and reimbursements; provided, however, that this agreement may be cancelled with thirty (30) days written notice to the other party, only prior to the advertisement of a design consultant contract or advertisement of the construction contract.

3. Developer shall not transfer, sale, assign or otherwise dispose of all or any part of the agreement or the rights hereunder with out prior written consent of the State.

4. This agreement shall become effective upon signature of the parties hereto.

5. This agreement may be canceled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this agreement.

7. In the event of any controversy between Continental Chandler, LLC. and the State which may arise out of this agreement, regardless of amount or subject, the parties hereto agree to abide by binding arbitration pursuant to in A.R.S. Section 12-1518.

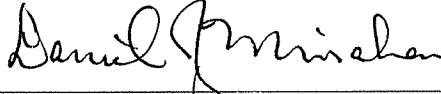
8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, Arizona 85007
FAX: 602-712-7424

Continental Chandler, LLC
10850 W. Park Place #600
Milwaukee, WI 53224
kgrimm@cproperties.com

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

CONTINENTAL CHANDLER, LLC By
CONTINENTAL 116 FUND LLC By
CONTINENTAL PROPERTIES COMPANY, INC. MANAGER

By 

DANIEL J. MINAHAN
President

STATE OF ARIZONA
Department of Transportation

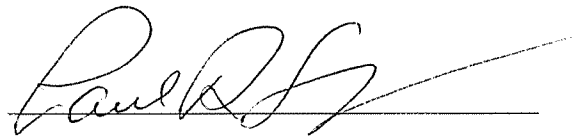
By 

DANIEL S. LANCE, P.E.
Deputy State Engineer

APPROVAL OF CONTINENTAL PROPERTIES COMPANY, INC. ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and Continental Properties Company, Inc. and declare this agreement to be in proper form and within the powers and authority granted to Continental ^{Chandler LLC PRJ} ~~Properties Company, Inc.~~ under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 9th day of October, 2002.

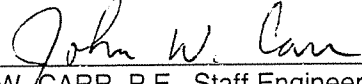


Attorney

RESOLUTION

BE IT RESOLVED on this 20th day of September, 2002, that I, the undersigned VICTOR M. MENDEZ, as Director of the ARIZONA DEPARTMENT OF TRANSPORTATION, have determined that it is in the best interests of the STATE OF ARIZONA that the DEPARTMENT OF TRANSPORTATION, acting by and through the Intermodal transportation Division, to enter into an agreement with the CONTINENTAL CHANDLER L.L.C., for the purpose of defining responsibilities for the design and construction of a deceleration/left turn lane on Arizona Avenue, at the entrance of Kohl's Retail Center, incident to the State's construction of the Santan Freeway (202L).

Therefore, authorization is hereby granted to draft said agreement, which, upon completion, shall be submitted to the Deputy State Engineer for approval and execution.



JOHN W. CARR, P.E., Staff Engineer
Development / Intermodal Transportation Division
for VICTOR M. MENDEZ, Director

**CERTIFIED COPY OF LLC RESOLUTION
TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT**

The undersigned, as Assistant Secretary of Continental Properties Company, Inc., a corporation organized and existing under the laws of the state of Wisconsin, hereby certifies that the following resolutions were duly adopted by Continental 116 Fund LLC, a Wisconsin limited liability company, which is the manager of Continental Chandler LLC, a Wisconsin limited liability company (the "LLC"), and the same have not since been rescinded or modified, and are presently in full force and effect;

RECITALS

WHEREAS, Continental Properties Company, Inc. is the manager (the "**Manager**") of Continental 116 Fund LLC, which is the manager of the LLC; and

WHEREAS, the LLC wants to enter into an Intergovernmental Agreement with the State of Arizona (the "**State**") which will provide for the LLC to construct a deceleration/left turn lane at Arizona Avenue for entrance to the Kohl's Retail Center in Chandler, Arizona.

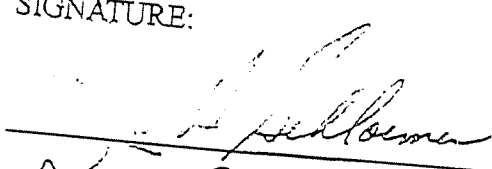
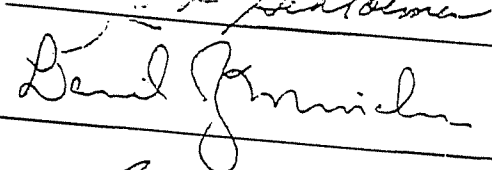
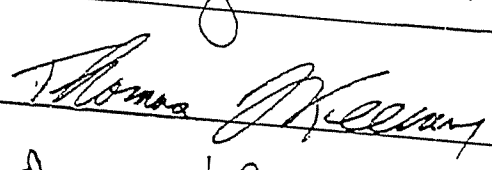
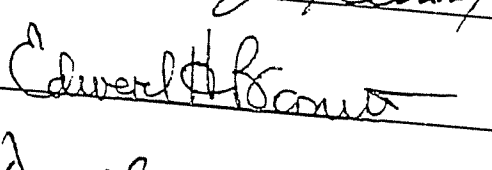
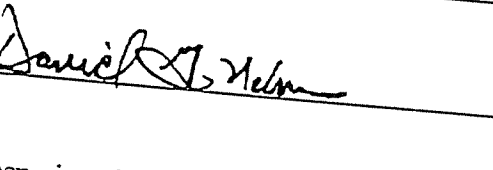
RESOLUTIONS

NOW, THEREFORE, BE IT RESOLVED, that the Chief Executive Officer acting alone, the President acting alone, or any two of the Executive Vice President, Vice President or Assistant Secretary of the Manager be, and they hereby are, authorized on behalf of, and in the name of, the LLC to execute the Intergovernmental Agreement with the State with such provisions as such officer or officers in his or their discretion deem necessary to the LLC and upon such terms as such officers, or any one of them acting alone, may agree.

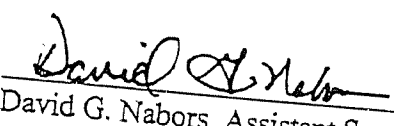
RESOLVED FURTHER, that the LLC ratifies the actions previously taken by the officers of the Manager, or any one of them acting alone, in connection with the LLC entering into an Intergovernmental Agreement with the State, and all other actions taken incidental thereto for the LLC.

RESOLVED FURTHER, that the authority conferred upon the aforesaid officers by these resolutions shall remain in full force and effect until written notice of revocation by further resolution of the Manager.

The undersigned further certifies that the officers of the Manager hereunder set forth have been duly elected and hold the offices specified with the Manager, and that the signature set forth beside each person's name is the true signature of such person:

TITLE:	TYPED NAME:	SIGNATURE:
Chief Executive Officer	James H. Schlocmer	
President	Daniel J. Minahan	
Executive Vice President	Thomas J. Keenan	
Vice President	Edward H. Barnett	
Assistant Secretary	David G. Nabors	

IN WITNESS WHEREOF, this certification has been signed on behalf of the LLC by the Assistant Secretary of the Manager as of this 11th day of October, 2002.


 David G. Nabors, Assistant Secretary

APPROVED

Susan Davis
Assistant Attorney General
Attorney for Department
of Transportation

Date 10-30-02

EXHIBIT A
ITEM 1 IGA COST BACKUP
Santan Freeway Dobson Road to Arizona Avenue
STP 202-C-002B
202L MA 047 H 568601C

Engineer's Estimate Version
JPA 02-139
Date: 10/03/2002

Item No	Item Description	Unit	Quantity	Unit Price	Amount
1	ITEM 1 - KOHL'S DEVELOPMENT AT ARIZONA AVENUE				
2					
3	AGGREGATE BASE, CLASS 2	CU YD.	245	\$18.00	\$4,418.00
4	BITUMINOUS TACK COAT	TON	1	\$250.00	\$184.00
5	APPLY BITUMINOUS TACK COAT	HOURL	0	\$125.00	\$15.00
6	FOG COAT	TON	0	\$250.00	\$92.00
7	BLOTTER MATERIAL	TON	10	\$40.00	\$388.00
8	ASPHALT BINDER (PG 76-16)	TON	18	\$200.00	\$3,600.00
9	ASPHALTIC CONCRETE (3/4" MIX)	TON	363	\$22.00	\$7,986.00
10	MINERAL ADMIXTURE (FOR 3/4" MIX)	TON	3	\$90.00	\$311.00
11	CONCRETE CURB AND GUTTER, TYPE A (MAG DET. 220) ⁷	L.FT.	845	\$8.00	\$3,360.00
12	CONCRETE CURB/MAG 222, TYPE A) ⁷	L.FT.	508	\$8.00	\$2,032.00
13	CONCRETE SIDEWALK (MAG DET. 230 & 231) ⁷	SQ.FT.	4,682	\$2.50	\$5,662.50
14	EMBANKMENT SPILLWAY (C-04, 10) ⁷	L.FT.	15	\$75.00	\$562.50
15	EMBANKMENT SCUPPER (MAG DET. 208) ⁷	EACH	1	\$2,600.00	\$1,300.00
16	BRICK FOR MEDIAN PAVING	SQ.YD.	71	\$20.00	\$1,411.00
17					
18					
19	SUBTOTAL CONSTRUCTION COST (ITEM 1)				\$31,540.00
20					
21	MAINTENANCE OF TRAFFIC SHARE ¹	L.SUM	1	1.50%	\$473.10
22	CONSTRUCTION SURVEYING AND LAYOUT SHARE ²	L.SUM	1	1.00%	\$315.40
23	CONTRACTOR QUALITY CONTROL SHARE ³	L.SUM	1	1.00%	\$315.40
24	MOBILIZATION SHARE ⁴	L.SUM	1	10.00%	\$3,154.00
25					
26	SUBTOTAL CONSTRUCTION COST (ITEM 1)				\$35,797.90
27					
28					
29	14% CONSTRUCTION ENGINEERING AND ADMINISTRATION ⁵			14.00%	\$5,249.02
30	5% ENGINEERING ADMINISTRATION ⁶			5.00%	\$1,874.65
31	DESIGN ENGINEERING (EXHIBIT B)				\$14,200.00
32	ITEM 1 TOTAL COST				\$57,121.57

Notes:

1. Maintenance of Traffic was calculated on a percentage basis (1.5% based upon the Engineer's Estimate on the SR202 Dobson Rd to Arizona Ave Project) of the construction cost of the City's items.

2. Construction Surveying and Layout was calculated on a percentage basis (1.0% based upon the Engineer's Estimate on the SR202 Dobson Rd to Arizona Ave Project) of the construction cost of the City's items.

3. Contractor Quality Control was calculated on a percentage basis (1.0% based upon the Engineer's Estimate on the SR202 Dobson Rd to Arizona Ave Project) of the construction cost of the City's items.

4. Mobilization was calculated on a percentage basis (10.0% based upon the Engineer's Estimate on the SR202 Dobson Rd to Arizona Ave Project) of the construction cost of the City's items.

5. Construction Engineering and Administration was calculated on a percentage basis of the construction cost of the City's items.

6. Engineering Administration was calculated on a percentage basis of the design cost of the City's items.

7. These items are shared cost items. Dollar value shown in Amount column are at 50%. Share is 50% to Kohls Developer and 50% to ADOT.

EXHIBIT B

Firm:

Parsons Brinckerhoff Quade & Douglas, Inc.
1501 W. Fountainhead Parkway, Suite 400
Tempe, Arizona 85282
Phone: (480) 966-8295
FAX: (480) 966-9234

Project Name:

Santan -Dobson Rd to Az Ave

Project Number:

TRACS No.:

202L MA 047 H 5666 01D

Contract No.:

01-88

DERIVATION OF COST PROPOSAL - SUMMARY
(Round Figures to the nearest \$1.00)
Estimated Direct Labor

Classification	Estimated Person-Hours	Average Hourly Rate	Labor Costs
Project Principal	0	\$ 53.76	\$ -
Project Manager	22	\$ 41.43	\$ 911
Senior Project Engineer	14	\$ 43.53	\$ 609
Project Engineer	59	\$ 32.15	\$ 1,897
Engineer/Designer	0	\$ 26.27	\$ -
Drafter/Technician	45	\$ 22.20	\$ 999
Sec/Clerical	2	\$ 19.64	\$ 39
Total	142		\$ 4,456

Audited Overhead Rate @	140.83%	Total Estimated Labor of Total Estimated Labor Subtotal	\$ 4,456 EC-10
			\$ 6,275 EC-20
			\$ 10,731

Estimated Direct Expenses
(Listed by Item at Estimated Actual Cost -- No Mark-up)

Outside Reproduction	\$ 105
Postage/Overnight Mail/Outside Messenger Service	\$ 74
Travel	\$ 104
CADD	\$ 600
Miscellaneous	\$ -
Total Estimated Expenses	\$ 883 EC-30

Estimated Outside Services and Consultants
(Listed by Firm or Name at Estimated Cost -- No Mark-up)

Firm	Method of Compensation CPNF, LS, etc.	Cost
Primatech	LS	\$ 1,600

Total Estimated Outside Services	\$ 1,600 EC-40
Total Estimated Cost to Consultant	\$ 13,214
Net Fee [Direct Labor + Overhead] x Multiplier	10.0% \$ 1,073 EC-50
TOTAL ESTIMATED COST	\$ 14,287
USE LUMP SUM COST	\$ 14,200 EC-64

Signature

Date

* The Multiplier is used to calculate the pro-rata of each month's billed net fee.

EXHIBIT C

JPA 02-139

Santan Freeway
Dobson Road - Arizona Avenue
TRACS No H 5666 01C

